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DOCKETED JULY 12 1996

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Federal Communications Commission  
Office of Secretary

OUR FILE NUMBER  
294,500-003  
DC1-253128.V1

WRITER'S DIRECT DIAL NUMBER

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VIA SAME-DAY HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, D.C. 20554

Re: Written Ex Parte Presentation in MM Docket No. 92-  
266, CS Docket No. 96-60

Dear Mr. Caton:

On behalf of The Game Show Network, L.P. ("GSN") and in accord with 47 C.F.R. § 1.1206(a), the undersigned are hereby filing with the Commission the attached ex parte written presentation to staff members of the Cable Services Bureau.

Two copies of the attached written ex parte presentation are being submitted to the Secretary's office. An additional copy is submitted to be date-stamped. Please return the date-stamped copy to the courier for delivery to the undersigned.

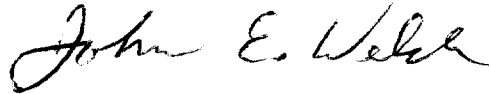
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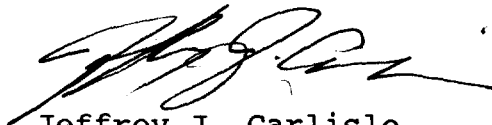
Page 2 - Mr. William F. Caton - July 12, 1996

Any questions regarding this filing should be referred to the undersigned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John E. Welch".

John E. Welch

A handwritten signature in cursive script, appearing to read "Jeffrey J. Carlisle".

Jeffrey J. Carlisle

Counsel to The Game Show Network,  
L.P.

Enclosure

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OUR FILE NUMBER  
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DC1-253108.V2

VIA SAME-DAY HAND DELIVERY

Ms. JoAnn Lucanik, Division Chief  
Ms. Lynn Crakes, Attorney  
Cable Services Bureau  
Federal Communications Commission  
2033 M Street, NW  
Room 918  
Washington, D.C. 20554

Re: Written Ex Parte Presentation in MM Docket No. 92-  
266, CS Docket No. 96-60

Dear Ms. Lucanik and Ms. Crakes:

At our meeting with you on June 13, 1996, the staff expressed an interest in hearing the views of The Game Show Network, L.P. ("GSN") on two issues: (i) the impact on small businesses of the Commission's cost/market formula proposed in its Further Notice of Proposed Rulemaking ("FNPRM") in the abovementioned dockets released March 29, 1996 and (ii) how part-time users would be accommodated in any auction system adopted by the Commission to allocate leased access channels where demand exceeds capacity. The following letter sets forth GSN's views on these issues. As this letter constitutes a written ex parte presentation under 47 C.F.R. § 1.1206(a), two copies are being submitted to the Secretary's office.

### **Impact of Cost/Market Formula on Small Businesses**

GSN does not believe that the cost/market formula described by the Commission in the FNPRM creates an unreasonable regulatory burden for small businesses for the following reasons.

First, the regulatory burden imposed by the cost formula is not significantly greater, and is probably less, than that imposed by the current highest implicit fee formula. The highest implicit fee formula requires operators to calculate, for each of three categories of programming, the implicit fee of each channel by taking the per channel cost to the subscriber and subtracting the monthly price per subscriber paid to the programmer. The highest implicit fee for each category is then multiplied by the number of subscribers actually receiving the service to arrive at a leased access rate. This calculation is done every year, for every tier of programming. See Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5949-52 (1993); FNPRM at ¶¶ 33-39. The cost calculation proposed by the FNPRM actually simplifies this calculation by eliminating programming categories for the purpose of calculating rates. See FNPRM at ¶ 74. Virtually all of the elements of the cost calculation then necessary to determine the leased access rate -- average subscriber revenue, number of subscribers and license fees paid -- are the same as those used in the highest implicit fee calculation. See id. at ¶¶ 77-95, Appendix B. Although they are used somewhat differently in the cost calculation, such use does not appear to be materially more difficult than the highest implicit fee calculation.

The cost formula does require cable operators to calculate the additional element of opportunity costs. However, the Commission has set forth specific definitions of permissible opportunity costs, thereby giving cable operators clear guidance in implementing the formula.<sup>1</sup> Moreover, virtually all of the listed opportunity costs -- lost advertising revenue, lost commissions, savings in programming costs, technical costs and part-time administrative costs -- are, or in any event should be, regularly calculated by cable operators in order to judge the productivity of the channel allocations they have made.

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<sup>1</sup> Opportunity costs would be particularly easy to calculate if the Commission's list of opportunity costs is, as GSN assumes, an exhaustive list, such that no other opportunity costs will be allowed. See Comments of The Game Show Network, L.P. 14, MM Docket No. 92-266, CS Docket No. 96-60 (filed May 15, 1996) ("GSN Comments").

Notably, and in accord with the above argument, the Commission would probably impose a significantly higher burden if it adopted the transition period discussed in the FNPRM. See id. at ¶ 99. The transition formula suggested by the Commission in Appendix E of the FNPRM would require cable operators to calculate both the highest implicit fee formula and the cost formula, and then engage in a third step to arrive at a leased access rate. This would be far more complicated and time consuming than simply substituting the cost formula for the highest implicit fee formula.

Second, it may not be necessary to use the cost formula in many markets, further reducing the potential regulatory burden presented by the Commission's proposed rule. The cost formula is likely to result in leased access rates that will spur tremendous demand for leased access channels. As such, demand for designated channels will soon exceed the capacity of systems in many markets, with the result that the cost formula will soon give way to market-based rates, as has been proposed by the Commission. See FNPRM at ¶¶ 96-97. Market-based rates will be significantly less burdensome than the current highest implicit fee formula.

Third, small cable operators will not be required to perform the cost calculation for very many channels. For the most part, small cable operators are less likely to have high capacity systems. Thus, most small cable operators will be required to designate, and calculate the rate for, four or five channels at most, minimizing the number of calculations they will be required to perform. See Comments in Reply of The Game Show Network, L.P. 16 MM Docket No. 92-266, CS Docket No. 96-60 (filed May 31, 1996); Ex Parte Presentation, Exhibit A, 5-6, MM Docket No. 92-266, CS Docket No. 96-60 (filed June 13, 1996).

It bears mentioning that to the extent the Commission is required to establish a small entity compliance guide to explain its proposed rules, see Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, § 212(a), 110 Stat. 857, 858 (1996), it has already gone some way towards doing so by clearly and concisely explaining the application of the cost formula in Appendices B, C and D of the FNPRM. Furthermore, these appendices indicate that the cost formula can be explained to small businesses in simple, easily applied terms that leave little room for ambiguity.

If, despite the above factors indicating that the regulatory burden will be minimal, the Commission still has some concern regarding the regulatory burden imposed on small businesses, it could easily exempt small businesses from the application of the rule, thus providing that market-based rates

using auction guidelines formulated by the Commission will immediately go into effect for small businesses.

#### **Treatment of Part-Time Leased Access in Channel Auctions**

GSN has suggested to the Commission that an auction procedure should be used to allot channels to programmers in the event demand for leased access channels exceeds capacity on a given system. See GSN Comments at 26-28. GSN has not specifically addressed how part-time leased access programmers would be accommodated in such a system.

GSN believes that any auction system should take into account the likelihood that full-time leased access programmers will not value a designated channel as highly as they might if a cable operator sprinkles part-time leased access programmers haphazardly among the designated channels. Such an allocation of designated channels would seriously disrupt program schedules. This would particularly impact advertiser-supported leased access programmers such as GSN, since advertisers could not reasonably expect that their ads would be broadcast at their desired times. The net result would be that full-time leased access programmers will submit lower bids for designated channels, thus depressing the rate received by the cable operator.

Accordingly, if a cable operator holds an auction of designated channels, channel capacity can be allocated between part-time and full-time leased access programmers as follows. Bids submitted by part-time programmers will be converted into full-time bids by multiplying them by the necessary ratio. If a part-time bidder makes a high enough bid to receive a channel, the part-time bidder would be accommodated on a designated channel<sup>2</sup> which henceforth would be used for all remaining part-time programmers. When this channel is almost filled (perhaps over 85%), part-time leased access programmers could occupy space on a second part-time channel if one were available.

Interestingly enough, with such a system, allocation of specific dayparts would, of course, depend on the highest bidder. Thus, by using the above suggestion, the Commission could create a market-based rate method for specific dayparts.

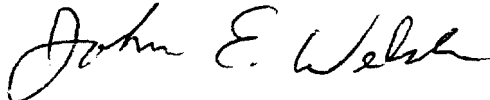
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<sup>2</sup> The choice of the channel would be left to the programmer, as suggested by GSN. See GSN Comments at 19-21.

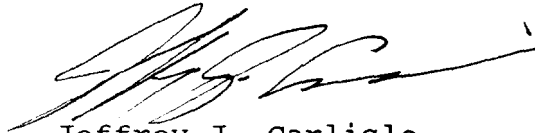
Page 5 - Ms. JoAnn Lucanik, Ms. Lynn Crakes - July 12, 1996

We hope the above comments have been helpful, and would be happy to provide any further information or comments necessary to more fully explore these or other issues. If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Welch".

John E. Welch

A handwritten signature in black ink, appearing to read "Jeffrey J. Carlisle".

Jeffrey J. Carlisle

Counsel to The Game Show Network,  
L.P.

cc: Ms. Julia Buchanan  
Mr. Edward C. Gallick  
Mr. Rodney McDonald